to appear on the instructions of an 'advocate and solicitor' since the reference to the latter in para (b) must be taken to mean 'an advocate and solicitor of the Supreme Court of Brunei'.

Case referred to
1 *Re Jagjit Singh* [1989] 1 MLJ 26 (distd)

Legislation referred to
Legal Profession Act (Cap 132) ss 3, 7(1)(b)

Douglas Lind for the applicant.
Ivan Leong for the Attorney General.

Cur Adv Vult

Roberts CJ: Mr Anthony Tai was admitted as an advocate of the High Court of Borneo on 12 December 1970. He is thus a qualified person for the purposes of s 3 of the Legal Profession Act (Cap 132) ('the Act') by virtue of para (d) of that section. Indeed, I am instructed that he was admitted as an advocate and solicitor in Brunei in 1987 and 1988 but he has not yet obtained a practising certificate for 1988. He is therefore obliged to seek ad hoc admission under s 7 of the Act.

Mr Tai is not qualified under para (b) of s 7(1) of the Act because he has not been retained in this case to appear on the instructions of an 'advocate and solicitor', since the reference to the latter in para (b) must be taken to mean 'an advocate and solicitor of the Supreme Court of Brunei'. It appears that, in this instance, Mr Tai was retained directly by the client who is the defendant in the criminal case for which Mr Tai seeks ad hoc admission. Mr Tai, therefore, if at all, must qualify under s 7(1)(c) of the Act as having 'special qualifications or experience for the purpose of the case'.

Mr Tai has appeared in a number of cases under the Gambling Ordinance of Sarawak which, he says, is in similar terms to that of the Brunei Ordinance. According to Mr Tai, he has had experience in dealing with criminal matters relating to gambling offences. There is, however, nothing to suggest that the case for which he has been retained in any way unusual. I can see no reason why a Brunei advocate and solicitor should not be more than competent to deal with a matter which, though no doubt of great importance to the client, seems, in other respects, to be a common one.

This application differs from that of *Re Jagjit Singh*,[1] on which I expressed a different opinion in 1987. In this case, the admission ad hoc of the applicant has been opposed by the Attorney General on the ground that the case concerned is one of a usual nature and that the skill involved in a gambling case can be found in the legal profession in Brunei. So far as I know, no efforts have been made by the defendant to retain an advocate and solicitor from the profession in Brunei.

I should make it clear that although s 7(1)(c) of the Act is in very wide terms so as to permit the admission ad hoc of persons not qualified in Brunei, I should find it difficult, in practice, to exercise my discretion so as to permit the admission ad hoc of a person who is not qualified to appear in accordance with s 3 of the Act.

For these reasons, in my view, the application of Mr Anthony Tai must be rejected.

Application dismissed.

Solicitors: *Douglas Lind & Co.*

Reported by *Ng Sheau Jiuan*

Re William Thomas Jacks

HIGH COURT (BANDAR SERI BEGAWAN) – ORIGINATING MOTION NO 30 OF 1988
ROBERTS CJ
11 AUGUST 1988

Legal Profession – American lawyer – Ad hoc admission for appearance in a particular case – Whether applicant had special qualification or experience – Legal Profession Act (Cap 132), ss 3 & 7(1)(b) & (c)

J, an American lawyer, applied for admission ad hoc to appear for the purposes only of High Court Civil Suit No 187/81. He was not a qualified person under s 3 of the Legal Profession Act. He wished his application to be dealt with both under paras (b) and (c) of s 7(1) of the Act.*

* Sections 3 and 7(1) of the Brunei Legal Profession Act (Cap 132) provide as follows:

3 A person shall be a qualified for the purpose of this Act if he –

(a) has had conferred upon him the degree of Bachelor of Laws in the University of Singapore or in the University of Malaya, or such other university or establishment as may be prescribed; or
(b) is a barrister-at-law of England or of Northern Ireland; or a member of the Faculty of Advocates in Scotland; or
(c) is a solicitor in England or Northern Ireland or a Writer to the Signet, law agent or solicitor in Scotland; or
(d) has been in active practice as an advocate and solicitor in Singapore or any part of Malaysia for such continuous period immediately preceding his petition for admission under this Act as may be prescribed; or
(e) has attained such alternative qualification as may be prescribed.

7(1) Notwithstanding anything to the contrary contained in this Act a judge may for the purpose of any one case admit to practice as an advocate and solicitor any person who –

(a) holds Her Britannic Majesty's Patent as Queen's Counsel;
(b) does not ordinarily reside in Brunei but who has come or intends to come to Brunei for the purpose of appearing in the case on instructions of an advocate and solicitor; or
(c) has special qualifications or experience for the purpose of the case.

Held, refusing the application:

(1) As far as para (b) of s 7(1) is concerned, the appellant was clearly not qualified under s 3 of the Act.

(2) It must be very rare for there to be an admission under s 7(1)(c) for the purposes of a particular case of a person who is not qualified under s 3 of the Act. The court was not persuaded that the present case was such or that the applicant had special qualifications and experience which should persuade the court to admit him ad hoc for the purposes of the said civil suit.

Cases referred to

1 *Societe Nationale Industrielle Aerospatiale* v *Lee Kui Jak & Ors* [1987] 2 MLJ 397 (refd)

2 *Re Anthony Tai Fook Hin* [1989] 1 MLJ 27 (refd)

Legislation referred to

Legal Profession Act (Cap 132) ss 3, 7(1)(b) & (c)

Andrew Ong for the applicant.
Ivan Leong for the Attorney General.

Cur Adv Vult

Roberts CJ: Mr William Thomas Jacks has applied for admission ad hoc for the purposes only of High Court Civil Suit No 187 of 1981. It is not in dispute that Mr Jacks is not a qualified person under s 3 of the Legal Profession Act (Cap 132). His qualification is solely an American one. He is qualified to practise only in the State of Texas and in such other courts which operate as appeal courts from Texas.

Mr Jacks acted as legal adviser to the plaintiff in the above action from the middle of 1985 onwards. It was at one time intended that this civil suit should take place in Texas, not in Brunei, although the accident occurred in the latter place. As a result of earlier proceedings, however, an injunction was issued, ultimately by the Judicial Committee of the Privy Council (see *Societe Nationale Industrielle Aerospatiale* v *Lee Kui Jak & Ors*[1]), against the plaintiff restraining him from seeking relief in Texas.

Mr Andrew Ong appeared on behalf of Choo Chan & Wong, the advocates and solicitors who are representing the plaintiff in this matter. They wish their application to be dealt with, for the ad hoc admission of Mr Jacks, both under s 7(1)(b) and under s 7(1)(c).

As to s 7(1)(b), I am prepared to assume, though this is not entirely free from doubt, that Messrs Choo Chan & Wong have been retained generally in the case so that Mr Jacks, if admitted, would be appearing in the case on their instructions.

However, as I have indicated in *Re Anthony Tai Fook Hin*,[2] s 7(1)(b) will not apply to those who come to Brunei for the purpose of appearing, unless they can show that they would otherwise be qualified for admission under s 3 of the Act.

For this reason, I refuse the application of Mr Jacks so far as that paragraph is concerned since he is clearly not qualified under s 3, but hold instead an American qualification.

Section 7(1)(c), however, is in general terms and permits the admission of any person, whether qualified under s 3 or not, to appear in a particular case if he has special qualifications or experience for that purpose.

I am prepared to acknowledge that there are cases in which the special qualifications or experience of a person may permit him to be admitted under s 7(1)(c), even though he does not possess the qualifications set out in s 3. However, I am not satisfied, and it is for the applicant to satisfy me on a civil burden of proof, that the applicant has established that he has special qualifications or experience which will be of assistance in this case.

It is said that he has had considerable trial experience in Texas and he has often argued there the question of product liability. I am further informed that the argument as to quantum would be conducted by leading counsel from London and that Mr Jacks, if admitted, would conduct only that part of the case which deals with liability.

This application, which is opposed by the Attorney General, is a novel one for Brunei. It seeks the admission of an American lawyer to argue matters which are governed not by American law but by the common law.

I find it difficult in those circumstances to hold that he has special qualifications or experience which will assist him in this action, whether or not he has been advising the plaintiff for the purposes of a possible case in Texas.

I am further instructed that the Privy Council, when dealing with this appeal, was presented with an undertaking given by the first defendant that the latter would 'cooperate in every practicable way in the admission to the Bar of Brunei Darussalam as ad hoc members for the purposes of this action of William Thomas Jacks and Richard Warner Midhoff'.

It was at one stage suggested in argument that I was, in some way, inhibited by this undertaking of the first defendant from exercising the discretion which I possess in ordinary applications for ad hoc admission. I do not think that this is so, nor that the Privy Council intended to suggest anything of the kind. Both defendants supported the admission of Mr Jacks to the Bar of Brunei for the purposes of his case. To such support I have given the weight which I think to be appropriate. I do not, however, regard either the Attorney General, who has expressed his opposition to this admission, nor myself, as in any way bound by this opinion of the Privy Council. Indeed, I do not regard its judgment as preventing me

from exercising my normal discretion under the Legal Profession Act (Cap 132), nor the Attorney General from opposing the admission of Mr Jacks if he wishes to do so. It must be noted that the Attorney General was not a party to the matter before the Privy Council, nor was his opinion sought before the undertaking of the first defendant was given.

In my view, it must be very rare for there to be an admission under s 7(1)(c), for the purposes of a particular case, of a person who is not qualified under s 3 of the Act. I am not persuaded that this is such a case, or that the applicant has special qualifications and experience which should persuade me to admit him ad hoc for the purposes of Civil Suit No 187 of 1981.

I am, therefore, obliged to dismiss this application which has been made on behalf of Mr Jacks for the ad hoc admission for the purposes of Civil Suit No 187 of 1981.

Application dismissed.

Solicitors: *Choo Chan & Wong.*

Reported by *Ng Sheau Jiuan*

MALAYSIAN REPORTS

Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia v Minister of Labour, Malaysia & Ors

SUPREME COURT (KUALA LUMPUR) – SUPREME COURT CIVIL APPEAL NO 240 OF 1987
WAN SULEIMAN, MOHAMED AZMI AND WAN HAMZAH SCJJ
13 MAY AND 25 NOVEMBER 1988

Labour Law – Trade union – Registration of trade union – Failure to take into consideration interest of workmen in particular trade, occupation or industry – Trade Unions Act 1959, s 12

Administrative Law – Certiorari – Registration of trade union – Trade union registered by Registrar – Failure to take into consideration interest of workmen in particular trade, occupation or industry – Appeal to Minister dismissed – Application for certiorari – Trade Unions Act 1959, s 12

The appellant is a trade union of executive officers of commercial banks in Peninsular Malaysia established in 1978. In 1980 the appellant received recognition of 17 commercial banks in Peninsular Malaysia, including the fourth respondent, Malayan Banking Bhd ('the bank'). On 8 October 1986, the second respondent, the Registrar of Trade Unions, registered the third respondent, the Association of Maybank Officers ('the association') as a trade union of executive officers in the employment of Malayan Banking Bhd. Subsequently the bank gave recognition to the association (the third respondent) and withdrew its recognition to the appellant. The appellant appealed to the Minister but the appeal was dismissed. The appellant then applied for an order of certiorari to quash the decision of the Minister in dismissing the appeal, but this was refused. The appellant appealed to the Supreme Court. The Registrar of Trade Unions had stated that he registered the association (third respondent) because he was satisfied that it is in the interest of the officers in the fourth respondent bank to register the third respondent as a trade union.

Held (Mohamed Azmi and Wan Hamzah SCJJ), allowing the appeal:

(1) The registration of the association as a trade union was a nullity as the Registrar had failed to take into consideration the interest of the workmen in the particular occupation which he was required to under s 12(2) of the Trade Unions Act 1959 and he had no power to register the association without considering their interest.

(2) The decision of the Minister on appeal in confirming the registration was a nullity because it cannot be said that all matters required by the law to be taken into consideration had in fact been taken into consideration by him.

Legislation referred to
Trade Unions Act 1959 s 12

Appeal from: Originating Motion No A32-108-1986 (High Court, Kuala Lumpur)